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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1959

No. 434

CHARLES E. LEGGETT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

Petition for Rehearing

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May It Please The Court:

Our petition for certiorari was filed and certiorari was denied on November 23, 1959.

In our petition for certiorari we sought to apprise the Court that the defendant was convicted on two counts of a three count indictment charging that on two dates, December 26, 1957, and on January 20, 1958, respectively, "wilfully, unlawfully and feloniously transported and *caused* to be transported in interstate commerce a motor vehicle knowing it to have been stolen."

The opinion of the Circuit Court of Appeals sustaining the conviction was published in full on pages 11-15 of the petition for certiorari.

In the petition for certiorari, the questions presented were (1) whether or not a conviction could be sustained on an indictment which charged defendant with "transporting or *causing* to be transported", in violation of 18 U.S.C.A. Section 2312, and (2) can the Statutory provisions be expanded to include a crime not contemplated by Section 2312.

We most earnestly and respectfully urge upon this Honorable Court that the argument in support of certiorari be reconsidered. Had the Congress intended that "causing" an automobile transported to be a crime, it would have so stated in Section 2312. In support of our argument it is submitted that Section 215 of the Criminal Code provides:

> "Whoever, having devised. . . . any scheme or artifice to defraud. . . . shall, for the purpose of executing such scheme, or artifice or attempting so to do, place, or *cause* to be placed, etc." (emphasis ours.)

To the same effect is the Narcotics Statutes.

The Congress having omitted the word "caused" from Section 2312, it is a reasonable assumption that Congress intended only that "the transporting" of an automobile be a crime.

It is fundamental that a criminal statute must be strictly construed in favor of the accused and may not be extended to cases not covered by the words used. (*United States of America* v. *Acme Can Company*, 299 U.S. 207-210).

Where the language of the Statute is plain and unambiguous it must be given effect according to its plain and obvious meaning. (82 C.J.S. 583)

Thus, only those transactions within the terms of the Statute are clearly within both the spirit and the letter of the Statute, and, if there is a fair doubt, that doubt should be resolved in favor of the accused.

The Government in its opposition brief, for the first time, cites and brings into the case 18 U.S.C.A. 2 (b). The indictment does not charge violation of the Section and in consequence, the defendant had no opportunity to defend against it. We submit that the Section does not have any application to the case at bar.

We respectfully submit the certiorari should be granted.

Respectfully submitted,

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